

**U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION & REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, D.C. 20202**

**POLICY DIRECTIVE  
RSA-PD-92-06  
RSM-1050 1/  
DATE: 01/31/92**

**TO : STATE VOCATIONAL REHABILITATION AGENCIES  
(GENERAL)  
STATE VOCATION REHABILITATION AGENCIES (BLIND)  
RSA SENIOR MANAGEMENT TEAM**

**SUBJECT :** Requirements for Granting Waivers for Maintenance of Effort (MOE)  
Under the Vocational Rehabilitation Services Program of the Rehabilitation  
Act of 1973, as Amended

**POLICY STATEMENT :** This policy directive supersedes Program Policy Directive 90-5, originally issued as Program Policy Directive 90-6 on February 20, 1990. This policy directive reflects the new provision in the regulations that adds an additional circumstance in which a State may qualify for a waiver of the MOE requirement. A waiver may now also be granted to a State if it has experienced exceptional or uncontrollable circumstances that result in the vocational rehabilitation program incurring substantial expenditures for long-term purposes due to one-time costs associated with construction or establishment of rehabilitation facilities or the acquisition of equipment.

The 1986 Amendments to the Rehabilitation Act of 1973 changed the MOE requirement from an expenditure level based on a single year, Fiscal Year 1972, to the average of the total of the three preceding fiscal years of non-Federal funds spent under the State Plan. The Secretary may grant a waiver or modification of a State's MOE requirement if a State has experienced exceptional or uncontrollable circumstances that would prevent it from maintaining its required MOE level.

1/ Under Development

**Definition:** Exceptional or uncontrollable circumstances are defined in program regulations in 34 CFR 361.86(e)(2) as circumstances, such as a major natural disaster or a serious economic downturn, that cause significant unanticipated expenditures or reductions in revenue and that either result in a general reduction of programs within the State or result in the State making substantial expenditures in the Vocational Rehabilitation Services Program for one-time capital costs in connection with the construction or establishment of rehabilitation facilities or acquisition of equipment.

**Requirements for Granting Waivers:** A request for a waiver should be submitted as soon as a State determines that it will be unable to make the required expenditures from non-Federal sources to meet its MOE level due to exceptional or uncontrollable circumstances that cause one of the following results:

A. A general reduction of programs within the State.

A major disaster, serious economic downturn, or other exceptional or uncontrollable circumstance, has created significant unanticipated expenditures or reductions in revenue collections that have decreased the amount of State funding available to support State programs in general; (2) it is known that other State programs (non-Federal support) are also affected by the revenue shortfall; and (3) it has been ascertained that the State Vocational Rehabilitation Agency will not be absorbing an inordinate share of the budget cuts. The reduction in each Department's and/or Agency's funding level should be proportionate, with the exception of mandated cost increases, individual entitlement programs, and debt service, unless the State can justify that its response to the exceptional or uncontrollable circumstance, creating the need for a waiver, warrants a different approach.

RSA will be focusing on the change in the funding level of the Vocational Rehabilitation Services Program in relation to the changed funding levels for other programs and the State's reasons for the funding changes, in determining whether to grant a waiver, and if so, the amount of the waiver.

B. The making of substantial one-time capital expenditures in the vocational rehabilitation program for costs for construction, or establishment of rehabilitation facilities, or the acquisition of equipment.

**Procedures:** A request for a waiver must be submitted in writing to the Commissioner of RSA, along with supporting documentation. The request should specify the amount of required non-Federal expenditures that the State wishes to have waived and should include an explanation of the reasons for the request. An information copy of the request should also be transmitted to the appropriate RSA Regional Commissioner. The explanation for the waiver request and the supporting documentation (see the section on Supporting

Documentation) will be used to determine whether a State's financial circumstances substantiate the need for a waiver and whether a waiver will be granted in whole or in part.

The amount of the waiver will be determined by the Commissioner on a case-by-case basis. In no case will it exceed the difference between a State's MOE obligation and the total State funding that is available for the Vocational Rehabilitation Services Program for the fiscal year for which the waiver is requested.

**Request Deadline:** A waiver request ordinarily should be submitted as soon as it has become evident that a major natural disaster, serious economic downturn, or other exceptional or uncontrollable circumstance, has occurred that will make it necessary to reduce general expenditures, including rehabilitation services, or as soon as a State determines it has been unable to meet its MOE level because one-time capital expenditures had created a higher than normal required MOE level. However, in no case should a waiver request be submitted later than six months following the close of the fiscal year for which the waiver is being requested. Since the statute requires that a State's subsequent year's allotment be reduced by the amount of its underexpenditures from non-Federal sources, a second-quarter deadline is necessary to allow RSA sufficient time to review and act on the waiver request, prior to making fourth-quarter allotments.

**Supporting Documentation :**

**A. A General Reduction of Programs Within the State**

Detailed budget, financial, and statistical data are required to substantiate the effect of the crisis on the State. The data will be used to compare State revenues and expenditures during the year for which the waiver is being requested with revenue and expenditure levels for the prior fiscal year. This data may include, for example, gross State product, population, per capita income, employment data, or recent disaster history. At a minimum, if applicable, States are required to submit the following data:

**Changes in General Revenue**

1. A table showing a comparison of gross State revenue, complete with an explanation of major sources; i.e., property, income, and sales taxes, lottery income, fees and permits, etc., for the fiscal year for which the waiver is being requested and the prior fiscal year.
2. If a waiver is being requested based on multi-year revenue reductions which have resulted in the need for a general budget reduction for the year for which the waiver has been requested, the State should provide additional tables breaking down sources of revenue. Narrative explanations should also be included to explain how the figures related to the finding of a general economic downturn.

3. List other programs, receiving Federal support, that will be unable to meet their matching or maintenance of effort requirements, due to the same conditions that form the basis for the vocational rehabilitation waiver request.
4. If the waiver request is due to a major natural disaster, indicate any Federal support received by the State as a result of that disaster. Provide information as to dates, amounts, programs, and the Federal Agency from which the support came.

#### **Changes in Total Expenditures**

1. A comparison of the State General Budget showing the amounts budgeted for each department for the fiscal year for which the waiver is being requested and the year immediately prior to that fiscal year.
2. If the vocational rehabilitation unit is not a separate line item for the purposes of Item 1 above, a breakdown of the budget for the programs within the department or umbrella agency in which Vocational Rehabilitation is housed must be provided for the fiscal year for which the waiver is requested and the year immediately prior to that fiscal year.
3. Indicate how legal (including court orders) or other constraints, such as mandated cost increases, individual entitlement programs, and debt service affect the distribution of reductions, due to the unanticipated expenditures or reductions in revenue.
4. In the case of either a natural disaster or general economic downturn, indicate if funds have been redirected toward particular activities to alleviate the crisis, thereby decreasing State funds available for other programs.

#### **B. The Making of Substantial One-Time Capital Expenditures for Construction or Establishment of Rehabilitation Facilities or Acquisition of Equipment**

Detailed information is needed to identify and substantiate the reason(s) for and effect of one-time capital expenditures. This information must show that the State has incurred substantial expenditures for long-term purposes for costs associated with construction, or establishment of rehabilitation facilities or the acquisition of equipment. The information should also indicate the source of the non-Federal funds, private contribution or state appropriated, used for the purchase. Additionally, this documentation must show how the fluctuations in expenditures for construction and establishment or the acquisition of equipment produced variations in MOE levels and that when these expenditures ceased or declined, State expenditure levels decreased. The waiver provision applies to all construction and establishment costs

that are allowable under Title I of the Rehabilitation Act, as amended, and included in the calculation of the MOE.

**Fiscal Year Data:** For States operating on a fiscal year which does not correspond to the Federal fiscal year of October 1 to September 30, information must be submitted for the four State fiscal years that correspond to the Federal fiscal year for which the waiver is requested and the immediately-preceding Federal fiscal year. For States operating on a biennial budget, submit data for the bienniums that correspond to the relevant Federal fiscal years.

**CITATIONS IN LAW** : Section 111(a) (2) of the Rehabilitation Act of 1973, as amended

**CITATIONS IN REGULATION** : 34 CFR 361.86  
(Final regulations published on July 18, 1991, 56 FR 33148)

**EFFECTIVE DATE** : Upon Issuance

**EXPIRATION DATE** : Upon Retired

**INQUIRIES** : Director, Financial Management and Information Systems Staff, RSA,  
(202) 732-1358

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Nell C. Carney  
Commissioner

OSERS/RSA/FMISS/BFOU/MMAJEWSKI/kal/12-13-92/DISK LAVERNE'S/PD\GRTWAIVE.PD